

## **REMARKS**

### **I. Petition for Extension of Time**

Applicants herewith petition the Commissioner for Patents to extend the time for response to the final Office Action mailed 21 January 2009 for two (2) months from 21 April 2009 to 21 June 2009. Authorization is given to charge the extension of time fee of \$490.00 (37 C.F.R. §1.136 and §1.17) to Deposit Account No. 23-1703. Any deficiency or overpayment should be charged or credited to the above numbered deposit account.

### **II. Disposition of Claims**

Claims 1, 2, 5-9 and 15-18 are pending. Claims 17-18 are withdrawn from consideration in view of the restriction requirement of record. Claims 1, 2, 5-9, 15 and 16 are rejected.

### **III. Claim Amendments**

Claim 1 has been amended to clarify that the expander device has a circumference and comprises a plurality of circumferentially spaced-apart arms. In accordance with the claimed invention, the thickness of the arms taper in a radial direction towards the center of the circumference. Support for the claim amendment is provided by the specification at page 10, lines 16-23, and Figures 9-12.

Claim 6 has been amended to clarify that the thickness of the circumferentially spaced-apart fingers of the adaptor taper in a radial direction towards the forward smaller end of the adaptor. Support for the claim amendment is provided by the specification at page 10, lines 5-9, and Figures 5-8.

Applicants submit that no new matter has been introduced by the claim amendments.

### **IV. Interview Summary**

Applicants agree with substance of the telephonic interview provided by the Interview Summary, mailed 19 May 2009. Specifically, on 15 May 2009, the Examiner and the undersigned attorney discussed the lack of novelty rejection in view of US 5,643,290 to Clark et al. ("Clark"). Specifically, to distinguish the claimed invention over the prior art as illustrated by Figures 5A and 13 of Clark, it was agreed that claim 1 would be amended to clarify that the

thickness of the arms of the expander device taper in a radial direction toward the center of the circumference of the expander device.

#### **V. Claim Objections**

The claims have been resubmitted with this Amendment giving the status identifier "withdrawn" in connection with claims 17-18. Withdrawal of the objection is requested.

#### **VI. Claim Rejections – 35 U.S.C. §112**

Claims 15 and 16 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 15 is directed to a surgical kit comprising the apparatus as claimed in any one of claims 1, 2 or 5-9. Claim 16 is dependent on claim 15.

The Examiner alleges that the term "surgical kit" as recited in claim 15 adds no structural or functional limitation to its parent claim(s). (See Office Action at page 5).

The Examiner's attention is respectfully directed to MPEP §2173.05(f) "Reference to Limitations in Another" which provides the following:

A claim which makes reference to a preceding claim to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing under **35 U.S.C. 112**, second paragraph. For example, claims which read: "The product produced by the method of claim 1," or "A method of producing ethanol comprising contacting amylose with the culture of claim 1 under the following conditions ....." are not indefinite under **35 U.S.C. 112**, second paragraph, merely because of the reference to another claim.

Claim 15-16 are directed to a surgical kit and are limited by the mounting apparatus of claims 1, 2 or 5-9. Therefore, relying on MPEP §2173.05(f), Applicants submit that the §112 rejection of claims 15-16 is improper. Withdrawal thereof is requested.

**VII. Claim Rejections – 35 U.S.C. §102**

Claims 1, 2, 5-9, 15 and 16 are rejected under 35 U.S.C. §102(b) as being anticipated by US 5,643,290 to Clark et al. ("Clark").

For the reasons set forth in the Interview Summary, Applicants submit that the claim amendments overcome the §102 rejection over Clark.

**CONCLUSION**

Applicants have made a good faith attempt to respond to the Office Action. It is respectfully submitted that claims 1, 2, 5-9, 15 and 16 are in condition for allowance, which action is earnestly solicited.

Any fees due in connection with this response should be charged to Deposit Account No. 23-1703.

Dated: 1 June 2009

Respectfully submitted,

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